UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,008	12/16/2003	Lior Porat	5760-14500	4517

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EXAMINER
LONG, ANDREA NATAE

ART UNIT	PAPER NUMBER
2176	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/737,008	PORAT ET AL.
	Examiner	Art Unit
	Andrea N. Long	2176

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 July 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Rachna S Desai/
Primary Examiner, Art Unit 2176

Continuation of 11. does NOT place the application in condition for allowance because: All of the Applicant's arguments have been considered but are not persuasive.

Applicant asserts that Planas fails to teach or suggest monitoring a plurality of application tiers, wherein said monitoring includes tracking one or more attributes associated with each of the application tiers.

The Examiner disagrees.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
Applicant fails to address the teachings of Planas in combination with Glaser in respect to the limitation of monitoring a plurality of application tiers, wherein said monitoring includes tracking one or more attributes associated with each of the application tiers. Planas teaches monitoring network objects by tracking attributes associated with the network objects. It is however Glaser, which was discussed in the Office Action mailed 11/26/2007, that teaches monitoring a multi-tier network (column 7 lines 28–42). Taking into consideration the ability to monitor application tiers by representing them as icons as that of Glaser in addition to using additional attributes associated with the icons as that of Planas, provides for the teaching of the above limitation.

Applicant asserts that Glaser fails to teach wherein the application tiers execute on one or more server computers, wherein said monitoring is performed by agent software executing on each of the one or more server computers.

The Examiner disagrees.

Glaser's development environment, Rapid Application Development (RAD) tool provides for the monitoring of the application tiers. As stated by the Applicant (page 4, Applicant's Arguments submitted 02/20/2008), Glaser teaches "receiving a data structure containing performance information and the performance information is obtained from the network manager, database manager, and/or web managers. Glaser RAD tool is additionally reasonable equivalent to software agents executing on server computers monitoring application tiers, because the RAD tool incorporates an Integrated Development Environment (IDE) that is used to design, develop, deploy, and debug computer programming. The RAD assists in data access, data manipulation and data rendering, all in which can be included in monitoring the application tiers.

Applicant asserts that the cited art fails to teach or suggest displaying a plurality of objects each corresponding to a respective one of the application tires.

The Examiner disagrees.

Figure 6 of Glaser provides a clear view of a graphical user interface that has a plurality of objects each corresponding to a respective one of the application tiers. The vertical lines on the screen could represent to one skilled in the art a distinction of one tier from the other, while the circles and boxes with corresponding text would represents objects with the Tiers (ex. server).

Applicant asserts that the cited are fails to disclose in response to detecting a change in the one or more attributes associated with the given application tier, altering the appearance of the corresponding object to reflect said change.

The Examiner disagrees.

Note the discussion above, Glaser teaches monitoring application tiers. Planas teaches detecting changes of the attributes associated with an object, and altering the appearance of the corresponding object to reflect the change. While Planas may teach just network objects, it is the combination of Planas and Glaser that teaches the above limitation. Applicant appears to be arguing that the present invention only displays one icon (a tier icon) as the visual representation of the tiers. However the current claim language only requires representation of tiers which is shown by Glaser by the separation of the tiers in Figure 6.

Applicant asserts that a proper motivation to combine Planas and Glaser has not been provided. Specifically the motivation provided by the Examiner is simply a statement of presumed benefit of Applicant's invention.

The Examiner disagrees.

The Examiners motivation to combine Planas and Glaser while the Applicant may feel is a broad motivation it is one that is expressed in both reference and is well known advantage to one skilled in the art. Further both references are analogous in art and seek to solve the same problem, which is monitoring of objects in a network whether individually or as a tier and also to improve network management (column 2 lines 14-15, Planas) and to identify the network performance bottlenecks and optimize the network resources accordingly (page 2 lines 19-24).

Applicant asserts that the references fail to teach or suggest wherein each of the plurality of indicators corresponds to a different attribute of the application tier.

The Examiner disagrees.

It should be noted that the Applicant's arguments attack only the references of Planas and Enchanted Learning, however it is the Glaser reference that teaches the applications tiers and is therefore the combination of the reference that teaches the above limitation. Enchanted Learning's discloses organizing data about multiple attributes associated with a single topic. Using the application tiers of Glaser as the single topic would account for the indicators to correspond to a different attribute of the application tier.

Applicant asserts that the cited references fails to teach wherein each of the one or more objects is connected by a directional arrow, wherein the directional arrow represents the data flow between the plurality of application tiers.

The Examiner disagrees.

McMillan's flowcharts include directional arrows. While those arrows may represent logic flow, the mere use of the arrows to show informational flow would provide one the knowledge of data flow following the direction of the arrows. Also directional arrows are stated in the Office Action dated 11/26/2007 are well known to one skilled in the art to show information flow.